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IN THE

SUPREME COURT OF THE UNITED STATES

October Term 1982

No. 82-650

SHARON MARGARET PAVLAK, Petitioner

v.

JOHN R. CHURCH, et al

APPENDIX - Pages 53 to 57

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APPENDIX - Pages 53 to 57

The Supreme Court could not have spoken more clearly when it said that American Pipe established that "commencement of a class action tolls the applicable statute of limitations as to all members of the class". Eisen, 417 U.S. at 176 n. 13 (emphasis added). I presume the Court intended "all" to mean "all", not "some" class members, as the majority holds. "All" includes the putative class members in American Pipe who intervened after denial of class certification, the class members in Eisen who opt out after class certification and file separate actions, and putative class members like Pavlak who file separate actions after denial of class certification. It is not the Eisen footnote I find "puzzling"; what I find "puzzling" is the majority's inexplicable refusal to take the Supreme Court at its word.

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UNITED STATES DISTICT COURT FOR THE

DISTRICT COURT OF IDAHO

SHARON MARGARET PAVLAK,)

Plaintiff-Appellant)

vs.)

)

JOHN R. CHURCH, individually and) in his official capacity as Chief) of Police for the City of Boise;) D.C. No.
FRANK E. RICHARDSON, CLINTON BAYS) 80-1209

and J. M. BERRY, individually and)
in their official capacities as)
officers of the City of Boise)
Police Department; KENT GREENWELL)
and DAVID ALLEN, individually and)
in their respective official)
capacities as Communications)
Supervisor and Assistant)
Communications Supervisor of the)
Public Works Department of the)
City of Boise; RYAN ARMBRUSTER,)
individually and in his official)
capacity as Assistant City)
Attorney for the City of Boise;)
RICHARD EARDLEY, individually and) SUMMARY
in his official capacity as Mayor) JUDGMENT
of the City of Boise; RALPH J.)
McADAMS, MARJORIE J. EWING, FRED)
L. KOPKE, BERNE K. JENSEN, JOY)

BUERSMEYER, and CORDELIA ONWEILER) individually and in their) official capacities as City) Council member of the City of) Boise; THE CITY OF BOISE, IDAHO,) a municipal corporation, MYRL E.) INGRAM, DENNIS BAIRD and JOHN) PASCHKE, each individually and as) agents and employees of MOUNTAIN) STATES TELEPHONE AND TELEGRAPH) COMPANY; and MOUNTAIN STATES) TELEPHONE AND TELEGRAPH COMPANY,) a Colorado corporation,) Defendants-Appellees)

In accordance with the Order entered this date granting the Amended Motion to Dismiss Or, In the Alternative, For Summary Judgment filed on behalf of Defendants Mountain States Telephone and Telegraph Company, Myrl E. Ingram, Dennis

Baird and John Paschke (hereinafter "Mountain Bell"), it is hereby Ordered, Adjudged and Decreed that Summary Judgment is hereby entered in favor of Mountain Bell and against Plaintiff, dismissing Plaintiff's Compalint with prejudice. All parties shall bear their own costs.

DATED this 20th day of January, 1981.

/s/ RAY McNICHOLS

RAY McNICHOLS

UNITED STATES DISTRICT JUDGE